the current licensees in the belief that such excessive prices would be condoned.

DRA has recognized that "... the cost-based price cap proposal is the best and most complete approach to eliminate duopoly rents and to allow new providers to purchase at cost only the services they want. ..."[42] For the reasons stated in its initial comments, however, the County believes that price cap regulation would be premature at this time, due to the lack of information and experience operating under cost-of-service regulation with respect to cellular. However, the County would support the DRA's view that cost-based price cap regulation is appropriate if the following specific conditions are satisfied:

- Initial rates for essential bottleneck cellular services are set on the basis of cost without any monopoly rents; and

- the cost-based price cap formula includes a "productivity target" or "X-factor" of the type that the Commission has established for LECs under its New Regulatory Framework (NRF).[43]

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42. Comments of DRA, at 27.

43. In D.89-10-031, 33 CPUC 2d 43, 162, the Commission adopted a productivity target of 4.5% with sharing of excess revenues on a 50/50 basis with respect to all earnings in excess of 150 basis points over the "market rate of return." In her Recommended Decision issued March 7, 1994 in the "NRF Review" proceeding, A.92-05-002/004, Administrative Law Judge Reed proposed that the X-factor be increased for Pacific Bell to 6%, without sharing, except that 100% of earnings in excess of 500 basis points above the market rate of return would be returned to ratepayers. R.D. at 134, 135, Ordering paragraphs 2, 7.

Although, like the County, the DRA concluded that there was insufficient competition in the provision of cellular services to justify price deregulation, and further recognized that cost-based regulation was the appropriate prescription, it nevertheless recommended the adoption of a price cap plan, without a productivity offset, using current cellular rates as the starting point. The County disagrees with the DRA's proposed regulatory framework. While clearly simpler to implement than a cost-based approach, the use of current cellular rate levels without regard to cost or to the inclusion of monopoly rents would simply perpetuate the existing excessive rate levels and offer no relief to cellular users. Indeed, even the New Regulatory Framework adopted for Pacific Bell and GTE-California did not tacitly accept the then-extant rate levels as the starting point, but required substantial adjustment.[44] The essential, monopoly character of cellular services deserves nothing less.

In its opening comments, the County recommended that essential bottleneck elements of cellular service be unbundled and be priced on the basis of cost, with the "retail" elements opened to competition and set at market levels. In their opening comments, a number of facilities-based carriers have argued that the specific unbundled plan proposed in the OII is technically infeasible, in that it contemplates access at each cell site rather than at the MTSO or at some other point of concentration where an efficient hand-off can be effected. In its opening

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44. See D.89-12-048, 34 CPUC 2d 155, 162, in which PacBell rates were decreased by $352.6-million prior to NRF.

comments, the County in fact contemplated that the unbundled essential facilities would embrace "generally the air time and associated cell management and interconnection functions"[45]

The claimed technical infeasibility of unbundling does not in any way diminish the compelling need for pricing essential facilities at cost: Indeed, if anything, that need is expanded. Unbundling of essential facilities and deregulation of competitive value-added retail functions (including landline access) is the best means for achieving competitive price levels overall, given the duopoly character of the facilities-based cellular market. If such technical unbundling is not feasible to the extent sought by the cellular resellers, then the prospect of effective price-constraining competition becomes even more remote. At the very least, all service elements that are incapable of being unbundled from air time must be subject to cost-based pricing. Thus, the less unbundling the facilities-based carriers will accede to, the more their services should be subject to cost-based rate regulation.

VI. If carriers are permitted to price services at monopoly levels, cellular services should be provided to government agencies at cost-based rates.

The County strongly supports the principle of cost-based pricing for all bottleneck cellular functions and for any other elements of cellular service for which unbundling (from the bottleneck elements) is technologically or economically

45. Comments of LA County, at 34.

infeasible. Cost-based pricing of cellular service, stripped of the monopoly rents which dominate existing price levels, would significantly increase the overall availability and utility of these essential services to County departments and to all other present and potential cellular users. If the Commission requires such cost-based pricing, no special rate treatment for government users is necessary or appropriate.

However, if the Commission persists in condoning the perpetuation of existing pricing practices through which the facilities-based cellular carriers are able to capture substantial monopoly rents for use of radio frequencies that were furnished by the federal government in the public interest and without charge to the original licensee, then it is both appropriate and necessary that the use of these same frequencies be made available to government agencies stripped of any monopoly rent.

It is important to emphasize that the County does not believe, nor is it suggesting, that non-government cellular users should be required to subsidize government usage. Prevailing cellular price levels are set to provide maximum profit to the facilities-based carriers. Presumably, if the carriers were able to increase rates for non-government users, they would have already done so if that would have resulted in still higher profit levels irrespective of any requirement for a special government rate treatment. Thus, under a regime in which prices include monopoly rents and which are set at profit-maximizing levels, a requirement for a government price differential or

discount would not result in higher rates for any non-government users.[46]

The idea of a special government rate for cellular service is not without precedent in California. Some cellular carriers have voluntarily offered modest discounts to government customers. Unfortunately, the two Los Angeles facilities-based cellular carriers are distinctly not among that group.[47] For example, US West Cellular of California, Inc. currently offers a special government rate that is over 35% lower than any LA Cellular or Pactel offering.[48] The City of San Diego has awarded its cellular service to US West.

Monthly charges and air time usage fees available to the County and other government units in the Los Angeles area hinder the County's goals of enhancing public safety with additional cellular phones, and as such disserve the public interest.

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46. This would not be the case if rates were set on the basis of cost exclusive of monopoly rent. In that event, a government discount would imply a rate set below cost, which would have to be recovered through above-cost pricing to non-government users, a condition that would constitute a subsidy by the latter of the former. It is precisely for this reason that the County does not believe that a special government rate is appropriate where cost-based pricing for all cellular services is prescribed.

47. Indeed, given the $1.3-million annual expenditure on cellular services by the County of Los Angeles, one would expect that if the market were as competitive as both Pactel and LA Cellular claim, these ostensibly "rival" firms would be competing for the County's business by establishing a government contract price program. Fortunately for other municipalities (although not for those in the Los Angeles area), not all cellular carriers are as collusive and intractable as the two in Los Angeles.

48. See Comments of US West, at 47-48.

Current discount plans, which generally cover cellular equipment only, are simply marketing techniques to attract the general public to purchase cellular services. The existing plans do not in any form offer special discounts to government and public service agencies.

Since neither of the two Los Angeles carriers appear willing to negotiate a reasonable access charge and per-minute air time rate, the County seeks the Commission's assistance in this matter. Even when the County is interested in new products and services from the carriers, there is no response. Many requests have been made to Pactel to present its data products to the County, but no responses have been forthcoming. LA Cellular responded once, but failed to return as promised. Clearly, the Los Angeles facilities-based carriers feel no competitive pressure to respond to the County's needs, including times when they stand to profit, as with data products and services. One can only speculate as to the treatment afforded customers smaller than the County.

While certain non-wireless ("A" block) cellular licensees may have purchased their franchises at price levels that reflected monopoly rent, at the outset all of these licenses were awarded by the FCC without charge to the licensee. However, it is quite common for governments to require some accommodation on the part of the recipient of an exclusive franchise in exchange for the recipient's use of the public resource that is involved. For example, in the same federal legislation that established the

basis for the instant Investigation, Congress has authorized the FCC to "auction off" the radio spectrum that has been earmarked for PCS.[49] It is also quite common for recipients of cable television franchises, as a condition of their award and in exchange for the right to open up public streets, to be required to establish and fund so-called "Local Access" channels and in some cases to construct additional cable facilities for municipal use without specific charge. These services can be — and commonly are — required by the municipalities when negotiating the franchise agreement with the Cable TV company.

In order to improve and facilitate the efficient provision of County services to the public, similar concessions should be made by cellular companies at least to governments and public service agencies. LA Cellular has explicitly refused to recognize any special obligation to accommodate the needs of government agencies, stating that "[e]xisting carriers have responded by offering substantial price discounts to their most valuable accounts."[50] As noted in its opening comments, County departments and agencies currently use more than 1,800 mobile telephone units and spend in excess of $1.3-million annually for cellular services. Clearly, the County is one of LA Cellular's most "valuable accounts." Significantly, and despite its large annual purchase, no substantial price discounts were ever offered to the County.

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49. Omnibus Budget Reconciliation Act, August 10, 1993.

50. Comments of LA Cellular, at 17.

The County recommended in its opening Comments, and reiterates its recommendation here, that facilities-based cellular carriers be required to make "accommodations to the government, in the form of reduced charges, Priority Access, and E-911, as a small compensation for the incredibly valuable licenses that were granted without charge."[51] If cost-based regulation is not adopted, reduced rates should be offered to government agencies at levels that exclude all monopoly rent. Moreover, such special government rates should not be funded by imposing higher prices on any other (non-government) users, as is done by LECs for "911" services, for which the carriers are permitted to, and do, bill a surcharge to their customers.[52] These special rates should be financed entirely out of the facilities-based cellular carriers' excess revenue from (the permitted) monopoly pricing of cellular service.

VII. Conclusion

This Commission should recognize the urgent need for effective regulation of cellular telecommunications services and should petition the FCC for authority to maintain this Commission's jurisdiction over cellular rates. It should implement the dominant/non-dominant framework as proposed in the OII, and should require that essential bottleneck radio (air

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51. Comments of LA County, at 10-12.

52. The "911 Fund" is financed by a surcharge to all basic service customers and in the form of a percentage of call charges to cellular customers.

time) services, and any other elements that cannot be feasibly unbundled therefrom, be priced at cost. If price cap type regulation of bottleneck elements is adopted, the "going in" rates should be based upon costs exclusive of any monopoly rents, and the price adjustment mechanism should mirror that applicable to price cap LECs under the New Regulatory Framework with respect to productivity, earnings sharing, and the earnings cap. Finally, if the Commission declines to require cost-based pricing for bottleneck cellular elements, it should require all facilities-based cellular carriers to provide service in support of essential, public safety and emergency response government functions at cost-based rate levels.

Respectfully submitted,

COUNTY OF LOS ANGELES

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